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10 Attorneys for Plaintiff
PHISH, INC.

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION**

15 PHISH, INC. a Delaware corporation,
16 Plaintiff,

17 v.

18 VARIOUS JOHN DOES, JANE DOES,
AND XYZ CORPORATIONS,

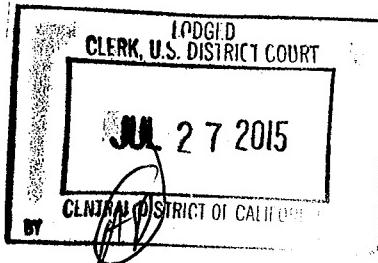
19 Defendants.

Case No. CV 15-05455-CAS (JCx)

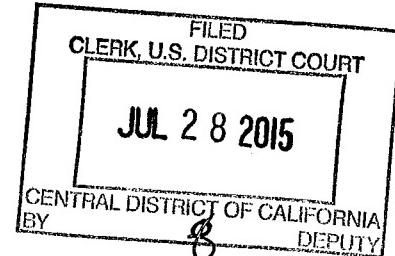
**[PROPOSED] PRELIMINARY
INJUNCTION AND SEIZURE
ORDER**

22 **FILED UNDER SEAL**

23 **PURSUANT TO JULY 20, 2015 ORDER SEALING FILE**



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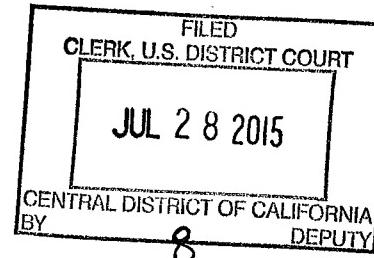


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1 Plaintiff, Phish Inc. ("Plaintiff"), having applied *ex parte* against unknown
2 individuals and entities (collectively, "Defendants") for a temporary restraining
3 order, order permitting civil seizure, order to show cause for preliminary
4 injunction, and order sealing file pursuant to Federal Rule of Civil Procedure 65
5 and the Lanham Act (15 U.S.C. §1051, et seq.), as amended by the Trademark
6 Counterfeiting Act of 1984, Public Law 98-473 (the "Lanham Act"), for the reason
7 that Defendants are and will be manufacturing, distributing, offering for sale and
8 selling goods bearing counterfeit reproductions of trademarks owned and
9 controlled by Plaintiff ("Counterfeit Merchandise"), and the Court having granted
10 the Temporary Restraining Order ("TRO") based on the complaint, the
11 memorandum of law, the declarations of Kevin Shapiro and Jeffrey L. Laytin, and
12 the exhibits thereto, and having reviewed the July 27, 2015 Declaration of Kenneth
13 L. Wilton regarding the status of the Temporary Restraining Order, the Court
14 finds:

- 15 (1) Defendants' manufacture, import, distribution, offer for sale and/or
16 sale of Counterfeit Merchandise has caused, and if not stopped will continue to
17 cause, immediate and irreparable injury to Plaintiff;
- 18 (2) Plaintiff is likely to succeed in showing Defendants have used and are
19 continuing to use counterfeit and/or unauthorized and infringing copies of
20 Plaintiff's federally registered trademarks and unregistered trademarks, names and
21 likenesses set forth below in connection with the manufacture, import, distribution,
22 offer for sale and/or sale of Counterfeit Merchandise;
- 23 (3) Plaintiff has also shown sufficiently serious questions going to the
24 merits of its claims to make them a fair ground for litigation, and that the harm to
25 Plaintiff from denial of the requested Preliminary Injunction and Order of Seizure
26 would outweigh the harm to Defendants' legitimate interests in the event such an
27 order were granted;

1 (4) Defendants, or other persons acting in concert with Defendants, would
2 likely destroy, move, hide or otherwise make inaccessible to the Court Defendants'
3 Counterfeit Merchandise, any business records related thereto, and the profits
4 derived therefrom, absent a Seizure Order, thereby denying Plaintiff access to
5 relevant evidence and frustrating the ultimate relief Plaintiff seeks in this action;

6 (5) Plaintiff has represented it has not publicized the requested seizure
7 order and has requested that the case be filed under seal;

8 (6) Plaintiff has demonstrated the location(s) at which Defendants are or
9 will be distributing, offering for sale and/or selling Counterfeit Merchandise; and

10 (7) Entry of an order other than this Preliminary Injunction and Order of
11 Seizure would not adequately achieve the purposes of the Lanham Act to preserve
12 Plaintiff's remedies for trademark counterfeiting, including, inter alia, the removal
13 of Counterfeit Merchandise from the marketplace and destruction of same, and an
14 award to Plaintiff of lost profits or damages.

15 Therefore, IT IS HEREBY ORDERED that pursuant to Fed. R. Civ. P. 65 a
16 preliminary injunction enjoining the Defendants from manufacturing, distributing,
17 offering or holding for sale, or selling the Counterfeit Merchandise, consisting of
18 any clothing, jewelry, photographs, posters, recordings and other merchandise
19 bearing the trademarks, service marks, likenesses, images, trade names or logos, or
20 any colorable imitations thereof of the musical group known as PHISH and each of
21 its individual members TREY ANASTASIO, MIKE GORDON, JON FISHMAN,
22 and PAGE MCCONNELL and their federally registered marks: PHISH FOOD,
23 U.S. Registration Number 2173816; PHISH, U.S. Reg. No. 2096010; PHISH, U.S.
24 Reg. No. 2029049; PHISH, U.S. Reg. No. 2029048; PHISH, U.S. Reg. No.
25 1917861; PHISH, U.S. Reg. No. 1782981; and PHISH and Design, U.S. Reg. No.
26 1930480; OYSTERHEAD, U.S. Reg. No. 2662635; GAMEHENDGE, U.S. Reg.
27 No. 2048310; GAMEHENDGE, U.S. Reg. No. 2053513 and WATERWHEEL,

1 U.S. Reg. No. 2247438; and their unregistered mark VIDA BLUE (collectively,
2 the "Plaintiff's Marks") should be issued;

3 AND IT APPEARING TO THE COURT that Defendants are likely to sell
4 and distribute the Counterfeit Merchandise bearing the Plaintiff's Marks during the
5 2015 Phish concert tour, (the "2015 Tour"), and will carry out such acts during the
6 entirety of the 2015 Tour set forth below, unless restrained by order of the Court,

7 IT IS FURTHER ORDERED that pending final hearing and determination
8 of this matter, the Defendants, their agents, servants, employees, attorneys,
9 successors and assigns and all persons, firms and corporations acting in concert
10 with them, and each of them be and hereby are preliminary enjoined from
11 manufacturing, distributing, offering or holding for sale, advertising and/or selling
12 Counterfeit Merchandise bearing any of the Plaintiff's Marks;

13 AND IT IS FURTHER ORDERED that the United States Marshal or other
14 federal, state or local law enforcement officers, or off-duty officers located within
15 each district in which Plaintiff enforces this order, assisted by one or more
16 attorneys or agents of Plaintiff, are hereby authorized to seize and impound any
17 and all Counterfeit Merchandise which Defendants sell, offer for sale or are
18 holding for sale, including from any bag, carton, container, vehicle, or other means
19 of carriage in which the Counterfeit Merchandise is found from ten (10) hours
20 before to six (6) hours after any performance by Phish within a twenty (20) mile
21 vicinity of the venues at which Phish shall be performing, including the following
22 venues and dates of the 2015 Tour:

- | | | |
|----------------------------|---|---|
| 24
25
26
27
28 | July 28, 2015
July 29, 2015
July 31-Aug 1, 2015 | <ul style="list-style-type: none">• Austin 360 Amphitheatre, Austin, TX• Verizon Theatre at Grand Prairie,
Grand Prairie, TX• Aaron's Amphitheatre at Lakewood,
Atlanta, GA |
|----------------------------|---|---|

1 August 2, 2015 • Tuscaloosa Amphitheater, Tuscaloosa,
2 August 4, 2015 • AL
3 August 7, 2015 • Ascend Amphitheater, Nashville, TN
4 August 8-9, 2015 • Blossom Music Center, Cuyahoga
5 August 11-12, 2015 • Falls, OH
6 August 14, 2015 • Alpine Valley Music Theatre, Elkhorn,
7 August 15-16, 2015 • WI
8 August 21-23, 2015 • The Mann, Philadelphia, PA
9 September 4-6, 2015 • Walnut Creek Amphitheatre, Raleigh,
10 • NC
11 • Merriweather Post Pavilion, Columbia,
12 • MD
13 • Magnaball at Watkins Glen
14 • International, Watkins Glen, NY,
15 • Dick's Sporting Goods Park,
16 • Commerce City, CO
17 •
18 AND IT IS FURTHER ORDERED that this order be and is hereby
19 conditioned upon Plaintiff's maintaining with the Clerk of this Court the
20 undertaking in the form of a bond in the amount of \$5,000 currently on file to
21 secure payment of such costs and damages not to exceed such sum as may be
22 suffered or sustained by any party who is found to be wrongfully restrained hereby;
23 AND IT IS FURTHER ORDERED that service of a copy of this order
24 together with the summons and complaint in this action be made upon the
25 Defendants by the United States Marshal, other federal, state or local law
26 enforcement officers or by any person over the age of eighteen (18) years not a
27 party to this action selected for that purpose by the Plaintiff, at the time the seizure
28 provided herein is effected and that such service shall be deemed good and
 sufficient, provided that a complete set of all moving papers submitted in support
 of this order shall be promptly provided to any defendant or counsel requesting
 same;

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2 AND IT IS FURTHER ORDERED that the process server shall offer a
3 receipt to each person from whom Counterfeit Merchandise is seized and that the
4 Plaintiff shall be deemed substitute custodian for all Counterfeit Merchandise
5 seized, which shall be maintained in a secure location pending further order of this
Court;

6
7 AND IT IS FURTHER ORDERED that this matter be set for status and a
hearing with respect to Plaintiff's execution of the seizure order for October 19,
8 ^{at 11 AM} 2015, with Defendants' responsive papers, if any, filed with the Clerk of this Court
9 and served upon the attorneys for Plaintiff by delivering copies to Plaintiff's
10 counsel at the address set forth below, seven (7) days before the hearing. Any
11 reply shall be filed and served by Plaintiff at or before the hearing;

12 **IT IS SO ORDERED.**

13 Dated: 7/28/15

14 By: Christina A. Snyder
15 Christina A. Snyder
United States District Court Judge

16 Proposed Order prepared by:

17 SEYFARTH SHAW LLP

18 By: KLW
19 Kenneth L. Wilton
Attorneys for Plaintiff
PHISH, INC.

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